BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION OF THE COURT BELOW

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit in said cause of New York Life Insurance Company, a corporation (defendant-appellant) v. The Federal National Bank, of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person (plaintiff-appellee), which petitioners here seeks to have reviewed, is not yet officially reported but appears on pages 229 to 236 of the transcript of the printed record filed herewith.

STATEMENT OF THE CASE

The essential facts of the case are fully stated in petitioners' petition for a writ of certiorari, and in the interest of brevity are not repeated here. Reference will be made to such facts, on points involved, in the course of the argument which follows.

SPECIFICATIONS OF ERRORS TO BE URGED

The United States Circuit Court of Appeals for the Tenth Circuit, in its said opinion in said cause, erred:

(1) In treating the questions decided by it in this case as matters of general law and in failing to apply the law of Oklahoma as the rule of decision herein.

(2) In holding that payment of the policy proceeds to Fields by the Company discharged the policy contract.

(3) In holding that the Company was relieved from liability in this case because of the policy provision reciting that the Company assumes no responsibility for the validity of any assignment.

(4) In rendering a decision contrary to the law of Oklahoma as declared by its statutes and the decisions of its Supreme Court.

(5) In deciding a question not raised by the parties or presented by the briefs.

SUMMARY OF THE ARGUMENT

I.

The Circuit Court of Appeals should have applied the law of Oklahoma as the rule of decision in this case and particularly Section 22, Title 15, Oklahoma Statutes Annotated, 1941, reading:

> "A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary to his support or the support of his family."

The statute was in full force at all times involved in this case, including the date of the delivery of the policy contract in 1928. The Oklahoma Court has construed this statute to mean that all contracts of persons wholly without understanding are utterly void for all purposes, even as to *bona fide* purchasers and encumbrancers for value without notice.

—*Connecticut General Life Ins. Co.* v. *Cochran*, 95 Okla. 111, 218 Pac. 313;

Dozier v. *Schuermann*, 175 Okla. 298, 52 Pac. (2d) 1063;

Harris v. *International Land Co.*, 89 Okla. 163, 213 Pac. 845.

A change of beneficiary of an insurance policy by an insane insured has been held by the Oklahoma Court in construing the Oklahoma statute to be a contract by a person wholly without mental capacity falling within the condemnation of the statute and utterly void.

—*McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422.

Both the policy and the assignment were executed and delivered within the State of Oklahoma; the insured and his wife were residents of Oklahoma at all times involved herein and the policy and assignment were Oklahoma contracts and governed by Oklahoma law.

—*Ruhlin* v. *New York Life Ins. Co.*, 304 U. S. 203, 82 L. Ed. 1290.

Under the rule of decision statute, 28 USCA, Sec. 725, and the case of *Erie R. R. Co.* v. *Thompkins*, 304 U. S. 64, 82 L. Ed. 118, and subsequent decisions based upon these authorities the Circuit Court of Appeals should have held the assignment of the policy to be utterly and wholly void. When a contract is void it has no existence for any purpose

and is wholly without force and effect as to all persons and for all purposes. A void contract is the same as no contract.

—*Dexter* v. *Hall*, 15 Wall 9, 21 L. Ed. 73, 67 Corpus Juris 267;

Security Finance Co. v. *Mills*, 195 N. C. 337, 142 S. E. 26;

Jacob v. *Uncle Farm Planting & Mfg. Co.*, 114 La. 1006, 81 So. 604;

Furst & Thomas v. *Merritt*, 190 N. C. 397, 130 S. E. 40.

An assignment of an insurance policy is a contract.

—29 Am. Jur., Sec. 1316;

Devin et al. v. *Connecticut Mutual Life Ins. Co. et al.*, 59 Okla. 192, 158 Pac. 435.

II.

The holding of the Circuit Court that payment of the policy proceeds to Fields discharged the policy contract is not sustained by the authorities cited in the opinion in support thereof. The cases involving a Banker-Depositor relationship are all from jurisdictions where contracts of an insane person are merely voidable and not void. The rule is different in states which have a statute making such contracts void. See, *Am., T. & B. Co.* v. *Boone*, 102 Ga. 202, 29 S. E. 182.

This distinction is also recognized in *Poole* v. *Newark Trust Co.* (Del.) 8 Atl. (2d) 10, one of the cases on which

the Circuit Court of Appeals relied. All of the other cases deal with voidable acts instead of void contracts, a distinction which the Circuit Court of Appeals has failed to recognize. The Alabama case of *Metro. Life Ins. Co.* v. *Bramlett*, 140 So. 752, which seems to be the principal case relied on by the Circuit Court of Appeals dealt with a change of beneficiary by an insane insured and not by an assignment. The Alabama Court merely held that such change of beneficiary was a voidable act and not a void contract. It expressly recognized in its opinion that an assignment would be a void contract and that the result of the case would have been different if the Court had been dealing with an assignment instead of with a change of beneficiary. Under Oklahoma law however a change of beneficiary is a void contract and if a change of beneficiary by an insane insured is void so must an assignment be.

—*McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422.

III.

The Circuit Court of Appeals in deciding that the Company was relieved from liability because of the policy provision reciting that the Company assumes no responsibility for the validity of any assignment, in effect, held that by contract the Company could relieve itself of duties and liabilities imposed by Oklahoma law. This holding is contrary to the statutes of Oklahoma which provide that contracts are unlawful which are contrary to the policy of express law, though not expressly prohibited, or which

have for their object, directly or indirectly, the exemption of any person from responsibility for his own negligence or violation of the law. See Title 15, Oklahoma Statutes Annotated, 1941, Sec. 211 and 212.

The statutes of Oklahoma making contracts of insane people void are legislative expression of the public policy of the State upon the subject. *National Life Ins. Co.* v. *Jayne* (C. C. A. 10) 132 Fed. (2d) 358. A stipulation in a policy contrary to state statute is void. *Whitfield* v. *Aetna Life Ins. Co.*, 205 U. S. 489, 51 L. Ed. 895.

Furthermore the policy contract does not expressly say that the Company shall be relieved from liability because of payments to assignees claiming under void assignments and the provision construed by the Circuit Court of Appeals was not intended for that purpose. It was merely to insure that the Company should assume no obligation to pay an assignee by merely receiving and filing the assignment. The same provision is found in the assignment (R. 215).

IV.

In deciding a question not raised by the parties or presented in the briefs and in failing to apply the Oklahoma statutes as construed by the Oklahoma Supreme Court the Circuit Court of Appeals departed from the accepted and usual course of judicial proceedings to an extent calling for the exercise of this Court's power of supervision.

ARGUMENT

I.

The Circuit Court of Appeals should have applied the law of Oklahoma as the rule of decision herein. The policy was delivered to the insured at Shawnee, Oklahoma (R. 27). The insured was a resident of Oklahoma (R. 27). The rights and liabilities of the parties were governed and controlled by Oklahoma law (R. 32).

In *New York Life Ins. Co.* v. *Jackson,* 304 U. S. 260, 82 L. Ed. 1329, this Court in dealing with an insurance case from the United States Circuit Court of Appeals, Seventh Circuit, said:

> "The court considered the question as one of general law. Its decision should have been made according to the applicable principles of the state law which governed the interpretation of the policy,"

granting certiorari and reversing the judgment.

In *Rosenthal* v. *New York Life Insurance Co.,* 304 U. S. 263, 82 L. Ed. 1330, in a similar case this Court took the same action, saying:

> "It is enough to say that the questions to be decided are those of state law and should have been determined according to the decisions of the state court."

In another case on petition for certiorari to the United States Circuit Court of Appeals for the Eighth Circuit, this Court in a *per curiam* opinion, granted the writ and reversed the judgment of the lower court, saying:

> "The court treated the question of the liability of the lessor as one of general law. The court should have applied the law of Missouri where the injury occurred." (*Hudson* v. *Moonier*, 304 U. S. 397, 82 L. Ed. 1422).

The question involved herein is the interpretation and construction of an Oklahoma Statute, the same being Sec. 22, Title 15, Okla. Stat. Ann. 1941, reading:

> "A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary to his support or the support of his family."

The court below was not at liberty to ignore the decisions of the Supreme Court of Oklahoma and deal with the questions involved as questions of general law. In *Fidelity Union Trust Company* v. *Field*, 311 U. S. 169, 85 L. Ed. 109, this Court said:

> "Here, the question was as to the construction and effect of a state statute. The federal court was not at liberty to undertake the determination of that question on its own reasoning independent of the construction and effect which the State itself accorded to its statute. That construction and effect are shown by the judicial action through which the State interprets and applies its legislation."

The Oklahoma Supreme Court has repeatedly construed the statute above quoted, and its decisions are uniform in holding that the contract of a person wholly with-

out understanding, is absolutely void for all purposes, even as to *bona fide* purchasers and encumbrancers for value without notice.

> "Where a grantor in a deed is incapable of comprehending that the effect of the deed when executed and delivered would be to divest such grantor of title to the land described in the deed, said grantor is as to such deed entirely without understanding within the meaning of Section 4981 Comp. Stat. 1921 (Sec. 22, Tit. 15, O. S. A. 1941) and the deed is void and conveys no rights to the grantee or subsequent purchasers or incumbrancers in good faith."
>
> —*Connecticut Gen. Life Ins. Co.* v. *Cochran et al.*, 95 Okla. 111, 218 Pac. 313.

Under Oklahoma law a purported contract by a person entirely without understanding is utterly void. No rescission is necessary.

> —*Dozier* v. *Schuermann*, 175 Okla. 298, 52 Pac. (2d) 1063.

> "A person wholly without understanding has no power to make a contract of any kind."
>
> —*Norris* v. *Dagley*, 64 Okla. 171, 166 Pac. 718.

To the same effect, see also, *Harris* v. *International Land Co.*, 89 Okla. 163, 213 Pac. 845, and *First Nat'l Bank of Enid* v. *Headrick*, 190 Okla. 164, 121 Pac. (2d) 566.

The change of beneficiary by an insane insured wholly without understanding has been held by the Oklahoma

Court to be a "contract" within the meaning of the Oklahoma statute heretofore quoted. See *McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422, wherein the Court said:

> "The change of beneficiary in a policy of life insurance, which reserves to the insured the right to do so, made by the insured at a time when he was entirely without understanding, is void, * * *."

The use of the word "void" by the Oklahoma Supreme Court in its decisions concerning the contracts of insane persons is the exercise of a deliberate choice of expressions and not merely the careless use of loose or inept phraseology as the following decisions distinguishing between void and voidable in dealing with the meaning of those terms as related to the contracts of insane persons show: *Adams Oil and Gas Co.* v. *Hudson,* 55 Okla. 386, 155 Pac. 220; *Norris* v. *Dagley,* 64 Okla. 161, 166 Pac. 718; *National Life Ins. Co.* v. *Jayne et al.* (10 Cir.) 132 Fed. (2d) 358.

The Oklahoma statute and decisions are but a declaration of the law concerning the contracts of insane persons as once viewed by this Court. See, *Dexter* v. *Hall,* 15 Wall. 9, 21 L. Ed. 73.

When a contract is void it has no existence for any purpose. It is wholly without force and effect to all persons and for all purposes. The effect of a void contract is the same as if it had never taken place. A void contract is the same as no contract.—67 C. J. 267; *Security Finance Co.* v. *Mills,* 195 N. C. 337, 142 S. E. 26; *Jacob* v. *Uncle Farm Planting & Mfg. Co.,* 144 La. 1006, 81 So. 604; *Furst & Thomas* v. *Merritt,* 190 N. C. 397, 130 S. E. 40. The decision

of the Circuit Court of Appeals in the instant case gives to the assignment a validity and vitality not permitted by the law of Oklahoma. The decision says in effect: "The assignment was not wholly void, it was valid as to the Company because it had no actual notice of the insanity of the insured." The assignment was a contract within the meaning of Oklahoma law.

—*Devin et al.* v. *Connecticut Mut. Life Ins. Co. et al.*, 59 Okla. 192, 158 Pac. 435;

City National Bank of Lawton v. *Lewis et al.*, 73 Okla. 329, 176 Pac. 237.

The insured, Allen Cammack, was a person wholly without understanding (R. 27, 28, 231). Under Oklahoma law his contracts were utterly void. The statute heretofore quoted represents the expressed public policy of Oklahoma concerning the protection of its mentally incompetent citizens. *National Life Ins. Co.* v. *Jayne et al* (C. C. A. 10) 132 Fed. (2d) 358. It should have been given effect by the Circuit Court of Appeals. The public policy with regard to insurance contracts is a matter for the states to decide. *N. W. Mutual Life Ins. Co.* v. *Johnson*, 254 U. S. 96, 65 L. Ed. 155. The failure of the Circuit Court of Appeals to apply the Oklahoma law as the rule of decision in this case, raises questions concerning the relations of federal and state courts which have always been regarded as important by this Court. The rule of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 82 L. Ed. 1188, expresses a policy that touches vitally the proper distribution of judicial power between

state and federal courts. See *Guaranty Trust Co.* v. *York*, not yet officially reported, Vol. 89, L. Ed. Advance Opinions, page 1418. In the case at bar federal jurisdiction rests solely upon diversity of citizenship. As stated by this Court in *Fidelity Union Trust Co.* v. *Field*, 311 U. S. 169, 85 L. Ed. 109:

> "It is inadmissible that there should be one rule of state law for litigants in the state courts and another rule for litigants who bring the same question before the federal courts owing to the circumstance of diversity of citizenship."

II.

The holding of the Circuit Court of Appeals that payment to Fields, the purported assignee, discharged the policy contract, is unsound and not supported by the reasoning or principles of the cases cited to sustain the same. All of the cases cited by the Circuit Court of Appeals in its opinion deal with voidable acts and not void contracts of insane persons. None of the cases deal with the act or contract of an insane insured made void by express statute. For example it is said in the cases cited by the Circuit Court of Appeals in its opinion herein:

> "* * * the general rule is that a contract of an insane person who has not been judicially adjudicated is not void but voidable."
>
> —*Poole* v. *Newark Trust Co.* (Del.) 8 Atl. (2d) 10.

"When this fact (lack of mental capacity) is established the contract is voidable by the lunatic or his representatives."

—*Reed* v. *Mattapan Deposit & Trust Co.* (Mass.) 84 N. E. 469.

None of the cases cited by the Circuit Court of Appeals holds that an assignment is not a contract, but only an act, done in performance of the original policy contract obligation. In *Metropolitan Life Insurance Co.* v. *Bramlett*, 140 So. 752 (Ala.), which is the principal case on which the Circuit Court of Appeals has founded its opinion herein, the Alabama Court was dealing with a change of beneficiary and not an assignment by an insane insured, a distinction which the Alabama Court was very careful to make, saying:

"* * * the general rule is that when a contract is utterly void, it does not have any existence even for the protection of one who relies and acted upon it without notice of its infirmity, and though it is negotiable paper * * *.

"We have stated the foregoing principles, not because they are disputed, but merely as preliminary to a consideration of the question in this case. For they inevitably lead to the conclusion that if the insured's request for a change of the beneficiary in this case was void because of his insanity at the time he executed it, no *bona fides* nor other circumstances could protect any one against the claim of its invalidity though he acted upon it in good faith.

"One question only is therefore of any uncertainty in this case. That is, whether the insured's insanity

caused his request for a change of beneficiary to be utterly void, or did it merely confer upon some one the right at his election to have it voided on that ground?

"In order to answer that question we inquire into the nature of the instrument by which the insured caused the insurer to change the beneficiary. The plaintiff was the original beneficiary named in the policy, but does not claim that it was assigned to him by the insured. * * *

"* * * such property right of the insured remained and continued unaffected after the attempted change of beneficiary as before. It is not claimed that he thereby assigned the policy to the substituted beneficiary, or otherwise undertook to release his right, still reserved, again to effect such a change, even to the extent of naming his personal representatives as the beneficiary. The effect of the attempted change was the exercise of an election reserved to him in the policy to determine whether one or another shall receive its benefits.

"An assignment would deprive him of the right, thereafter to name his own estate or any one else as the beneficiary. Undoubtedly an assignment by an insane person of his rights conveys nothing."

We submit that none of these authorities support the conclusion of the Circuit Court of Appeals in its opinion herein to the effect that an assignment by an insane insured in a jurisdiction where contracts of an insane person are made void by express statutes, is merely the exercise of a power under the original policy contract, and therefore only a voidable act instead of a void contract prohibited

by law. Furthermore, in Oklahoma it has been expressly held that a change of beneficiary by an insane insured is a void contract falling within the condemnation of the Oklahoma Statute. *McMurtray* v. *McMurtray*, 67 Okla. 50, 168 Pac. 422. If a change of beneficiary by an insane insured is void under Oklahoma law, surely an assignment must be, and the Circuit Court of Appeals should have so held in the instant case.

III.

The Statutes of Oklahoma provide

"Those contracts are unlawful which are:

1. Contrary to an express provision of law,
2. Contrary to the policy of express law, though not expressly prohibited; or
3. Otherwise contrary to good morals."

—Title 15, O. S. A. 1941, Section 211, and

"All contracts which have for their object, directly or indirectly to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another or violation of law, whether willful or negligent, are against the policy of the law."

—Title 15, O. S. A. 1941, Section 212.

It is submitted that the decision of the Circuit Court of Appeals, holding that the Company was relieved from liability herein because of the policy provision reading:

"The company assumes no responsibility for the validity of any assignment,"

gives to such provision an interpretation in conflict with the statutes above quoted.

Such interpretation is clearly contrary to the policy of express law of Oklahoma making contracts of insane persons void and not merely voidable. If the interpretation given this policy provision by the Circuit Court of Appeals is correct, no insurance company can be held liable for paying out policy proceeds on assignments void, because of lack of insurable interest, fraud in the inception, insanity, duress, coverture, lack of contractual capacity, or reasons of public policy, although such assignments are made void by express statute of the forum of their execution, where the company acts without actual notice of the invalidity of the assignment, because the Circuit Court says in its opinion concerning this provision:

> "It can only mean that the Company shall not become liable by virtue of the assignment which for any reason was invalid." (R. 235).

Since this provision is in nearly every life insurance policy in the United States and has been for many years, the importance of a correct construction thereof is apparent. It should be noticed that the Circuit Court of Appeals has not cited a single text, case or other authority in support of its construction of this policy provision, nor has it taken recognition of the Oklahoma rule that where an insurance policy is susceptible of two constructions, the construction most favorable to insured must be adopted. *New York Life Insurance Company* v. *Federal Nat'l Bank of Shawnee* (C. C. A. 10) 143 Fed. (2d) 69. It is urged however, that the policy

provisions have no such meaning as is ascribed to it by the Circuit Court of Appeals. Virtually the same provision appears in the assignment blanks furnished by the Company (R. 215), and the obvious purpose is not to relieve the Company from its contract obligation to the policyholder to either pay him, or his legally designated beneficiary or assignee, but to make it plain to everyone that by furnishing blanks and accepting filing of assignments, the Company is not agreeing to pay the designated assignee, irrespective of the validity of his assignment. There is nothing in the provision which by express language indicates a purpose to relieve the Company from any of the obligations or duties imposed by law.

IV.

By failing to follow the Oklahoma law as the rule of decision in this case, and by deciding a question not presented by the parties in their pleadings, briefs or arguments, and not considered by the court below, to-wit: the interpretation of the policy provision last referred to, we respectfully suggest that accepted and usual course of judicial proceedings has been departed from to such an extent as to call for an exercise of this Court's supervision. *Letulle* v. *Scofield*, 398 U. S. 415, 84 L. Ed. 355.

V.

It is respectfully submitted that the right of petitioner for the benefit of its mentally incompetent ward to have the questions involved in this case decided according to the law of Oklahoma, suggests that this Honorable Court should review the decision of the Circuit Court of Appeals herein and enter its judgment affirming the decision of the district court.

Respectfully submitted,

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